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Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

I. Introduction

At the previous session of the Special Committee, the Libyan Arab Jamahiriya submitted a working paper under the item on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/AC.182/L.110 and Corr.1), and some of the matters it addressed were considered. In view of the issues raised during the discussion, and given the intimation of some delegations that they would have to consult with their governments and the consequent call for consideration to be postponed, the Jamahiriya deems it appropriate to resubmit the paper, in revised form, at the present session.

2. There can be no doubt that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization has a mandate to discuss this paper. The Special Committee is one of the instruments through which the General Assembly functions. In accordance with Articles 10, 11, and 13 of the Charter, the General Assembly may consider and make recommendations on any questions "within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter" (Article 10), may "consider the general principles of cooperation in the maintenance of international peace and security" (Article 11, paragraph 1), and shall "initiate studies and make recommendations for the purpose of ... promoting international cooperation in the political field and encouraging the progressive development of international law and its codification" (Article 13, paragraph 1).

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II. The power of the Security Council to impose sanctions is subject to the Charter and to international law

3. The power to employ sanctions is derived from the Charter and must thus be exercised in a framework of respect for the Charter and for public international law.

This means that compliance with the Charter and public international law is required:

When the decision is taken to impose sanctions;

And when practical measures are being taken to implement the sanctions.

4. The Security Council has the power to impose sanctions under the Charter. (The current provisions of the Charter relating to the powers of the Security Council, its composition and voting in the Council are, however, no longer appropriate to the present situation of the international community, and the Great Libyan Arab Jamahiriya has now been advocating their revision for a quarter of a century.)

The legal validity of the Security Council's actions derives from the "empowerment" granted to the Council by Member States and from its authorization to act on their behalf in the matter of the maintenance of international peace and security (see Article 24, paragraph 1). This empowerment is not absolute or unrestricted, and paragraph 2 of the same Article qualifies it by stating that: "In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations". The purposes of the United Nations, as stated in Article 1, require the Council to exercise its powers "in conformity with the principles of justice and international law" (Article 1, paragraph 1).

This being the case, it is necessary to reconsider the Council's authority to act alone in imposing sanctions. This is because the imposition of sanctions, as an action of far-reaching effect, should be decided internationally and not by a decision adopted in accordance with international law alone, in the sense that the decision is made by the General Assembly of the United Nations or that the Assembly has a role in its adoption or in commenting on it. The interests of peoples and nations are not properly represented in the Security Council, and it is monopolized by parties associated with uniform or similar motives and interests.

5. The Council possesses under the Charter an inherent power with respect to situations that represent a threat to or breach of the peace and cases of aggression. This is a power that is based on the absolute priority accorded to the maintenance of international peace and security. Like other powers, however, it must be exercised in the light of the provisions and principles of the Charter, that is to say that the Council must use it in a non-discriminatory and non-arbitrary manner that accords with reality if it is to remain within the framework of the authorization for which provision is made in Article 24, paragraph 1. This raises questions as to the legitimacy of many of the positions taken by the Council to justify its characterization as a threat to international peace and security of international disputes or regional situations that could be resolved by peaceful means and do not pose a threat to international security. There are many other situations where the Council has refrained from giving this characterization to cases of blatant armed aggression and to situations that do indeed pose an immediate and serious threat to international peace and security.

Accordingly, the imposition of sanctions must be legitimate. The reasons that necessitate the imposition of sanctions must be identified and stated in advance, and it may also be necessary to establish for each of these reasons its appropriate sanction or sanctions.

III. Sanctions and coercive measures constitute exceptional action, in the sense that such action is a last resort and must only be imposed within the narrowest bounds and after all peaceful means have been exhausted

6. It is true that the Charter does not explicitly require the Council to exhaust all peaceful means before resorting to the measures stipulated in Article 41, but that it must do so is to be inferred implicitly from the provisions of the Charter and from the nature of sanctions themselves.

(a) Article 24, paragraph 2, provides that: "In discharging these duties [i.e. the maintenance of international peace and security] the Security Council shall act in accordance with the purposes and principles of the United Nations". According to Article 1, these purposes include that " ... to bring about ... by peaceful means, and in conformity with the principles of justice and international law [, adjustment or settlement ... of disputes] ... ".

(b) The adoption of coercive measures is by its nature an exceptional action, representing as it does interference in the affairs of the State targeted by sanctions and being detrimental to the interests of that State. It must therefore be based on necessity, inasmuch as the Council finds itself in a situation in which it can meet the case before it only by deciding to impose sanctions as a last resort and having exhausted all non-coercive means.

(c) The Council was given determinative powers to assess the appropriateness of imposing sanctions and to select the type of sanctions to be imposed in order to enable it to confront emergency or urgent situations where it might not be appropriate to employ non-coercive means, and the Council is required not to be arbitrary in using these powers. Accordingly, when it resorts to the imposition of sanctions before exhausting all possible peaceful means of addressing a situation before it in cases other than emergency or urgent cases, it is being arbitrary in the use of its powers.

IV. The imposition of sanctions must not place upon the targeted State financial, economic or humanitarian burdens that are additional to and other than those resulting from the direct application of the sanctions to the extent necessary to achieve their objective

7. This restriction is based on the provisions of Article 50 of the Charter and is fully in accord with the *travaux préparatoires* for the Charter, as endorsed by the States participating in the San Francisco Conference (see *United Nations Conference on International Organization*, vol. XII, p. 397).

It is also a direct application of the established principles of international law as they relate to the legal regime of countermeasures in general. These principles require that such measures should not violate the principles of proportionality and the avoidance of excess and that they should not lead to the wholesale and extensive violation of human rights.

The comments of States on the draft articles on State responsibility, as adopted in first reading by the International Law Commission, indicate general international endorsement of the rules relating to restrictions on countermeasures. The basis of these rules is that there should be proportionality between the substance of the sanctions imposed and their impact, in one respect, and their legitimate objective, in another, so that they do not inflict extreme or excessive damage on the targeted State and do not cause harm that has no connection with the objective for which they were adopted.

V. Sanctions must achieve their goal

This restriction relates to the legitimacy of the objective and the justice of the sanction. This is because sanctions, in view of the fact that they constitute an action taken against a specific State in order to induce it to comply with international decisions, must not be prejudicial to the rights of any third State. This restriction must also be observed within the State targeted, in the sense that sanctions must not violate basic rights, especially those of vulnerable groups, in that State.

VI. The targeted State has a right to seek and obtain just compensation for any unlawful damage done to it by sanctions imposed without good grounds or in a way that exceeds requirements and is incompatible with the notion of proportionality with the achievement of their objective

8. This is merely a necessary consequence of subjecting the power to impose sanctions to the Charter and to international law, it being conceivable that sanctions that violate the Charter, are *ultra vires*, are inappropriate or deviate from the objective could be imposed.

It is true that giving effect to this principle could encounter practical difficulties concerning the parties competent to determine excess and the designation of the international party or parties responsible. It nevertheless remains an application of the general principles of law, just as international organizations are international legal persons subject, like States, to be held accountable for their unlawful acts and thence for the discharge of the obligations imposed on them by the law of liability. Otherwise there would be no sense in subjecting them to the principle of legality and regarding them as obliged to respect their own charters and international law.

9. Accordingly, sanctions must be:

(a) Lawful in terms of the reason for them, so that they are based on a genuine, actual reason that justifies their imposition;

(b) Lawful in their implementation, so that they do not constitute a flagrant violation of human rights and are not disproportionate;

(c) Fair and just;

(d) Capable of achieving their objective;

(e) Such that whoever imposes them is held accountable in the event they are arbitrary, excessive or cause unjustifiable harm to the interests of the targeted State or third States and compensates those countries for the damage caused when the measures involved are unlawful.